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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

QIUYUE JIAO et al.,

Plaintiffs and Appellants,

v.

JIN JIN et al.,

Defendants and Respondents.

G055531

(Super. Ct. No. 30-2016-00832425)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Peter J. Wilson, Judge. Affirmed.

Law Offices of Farnell & Norman and Ronald E. Norman for Plaintiffs and Appellants.

Law Offices of Steven L. Sugars and Steven L. Sugars for Defendants and Respondents.

Qiuyue Jiao and Xiang Ji, mother and son (collectively, appellants), appeal from a posttrial judgment denying them relief on the complaint they brought against Jiao's former business partner, Jin Jin, and Jin's husband and daughter. They contend the trial court erred in concluding they failed to meet their burden of proof on their intentional tort and business-related causes of action because they presented substantial evidence in support thereof. We find no error, however, because the court's conclusion was based on its determination that none of appellants' evidence was credible, a determination to which we defer. Accordingly, we affirm the judgment.

FACTS

Jiao and Jin's business relationship began when they decided to join together to own and operate a massage business. Both made monetary investments to get the business off the ground, and they orally agreed costs and profits would be divided equally. Initially, Jin handled most of the administrative and day-to-day operations. After the business struggled financially in the first year, however, Jiao became more actively involved.

Although things appeared to turn for the better during their second year of business, the relationship between the two women began to deteriorate. And after a physical fight occurred at the business—involving Jin, her husband and her daughter, as well as Jiao and Ji—it became clear Jiao and Jin's partnership would end. Jin stepped away from the daily operations, and Jiao later sold the business.

Both Jiao and Jin filed suit against the other. Jin alleged Jiao unwarrantedly converted partnership assets to her own. She sought damages, an accounting and a judicial disassociation of the partnership. Jiao alleged Jin breached their partnership agreement and fiduciary duties she owed to the partnership. Among the relief she sought were compensatory and punitive damages, an accounting, a constructive trust, and judicial dissolution of the partnership. Jiao later amended her complaint to (1) add causes of action for battery, assault, and intentional infliction of emotional distress,

all based on the one-time physical altercation that occurred at the business, (2) add as defendants Jin's husband, Harry Ashlock, and Jin's daughter, Jia Shou,¹ and (3) add her son, Xiang Ji, as a plaintiff.

The two cases were consolidated and proceeded to a bench trial. With the exception of a few percipient witnesses, the plaintiffs and the defendants were the ones who testified.

Ji, who admitted to suffering from memory loss, testified about the disputed physical altercation. He stated an argument broke out when Jin would not let him lead two customers back to the massage rooms to receive services. According to Ji, Ashlock was the first to get physical, hitting him with a fist in the face. Thereafter, Shou scratched his face with her nails. Although he could not recall the exact number of times he was hit by Ashlock, he estimated it was about ten times. Ji also testified he observed Jin hit and scratch Jiao's face. To protect Jiao, he picked up a laptop computer belonging to Jin and Ashlock, and threatened to smash it. This apparently calmed down the parties and Ji was able to escape out the front door. An ambulance later transported him to the hospital so his injuries could be treated.

In addition to describing physical injuries which resulted from the incident with Ashlock and Shou, Ji testified he sustained psychological impacts from derogatory statements Shou repeatedly made about his mother. He claimed Shou called her a "slut" and a "prostitute." Ji also stated Jin threatened him and his mother, telling them they better "be careful" and "watch out."

Ashlock also testified about the altercation. His recollection was that it all started when two customers walked into the business wanting massages. Jin, told them they were closed, but Ji and Jiao tried to lead them back to the rooms where the massages took place. Ji got upset he could not get to the rooms because Jin was blocking the

¹ Shou was later dismissed from the action because she was not properly served with the complaint.

doorway, so he started screaming and swinging his arms. He hit Jin in the eye, giving her a black eye. According to Ashlock, Jiao also got involved in the melee; she bit Jin on the arm. At that point, in an attempt to protect his wife, Ashlock approached Ji and pushed him away. Ji then grabbed Ashlock's laptop computer and threatened to smash it, effectively ending the fight. Ashlock could not recall whether Shou got involved in the physical altercation.

Jin testified and provided her version of the physical confrontation. Like her husband, she said Ji and Jiao were the first to turn things physical; Jiao bit her and Ji hit her. It was only after those initial actions that Ashlock pushed Ji and Shou tried to "drag" Ji away to prevent further harm to her mother.

In addition, Jin explained the amounts she believed she was still owed from the wind up of the business. When asked specifically about \$8,000 which she withdrew from the business's bank account, she explained she did not keep any of it. Rather, she used the money to pay the business's bills and the employees' compensation.

Jiao was the last to testify. Half her testimony focused on the business's finances, including the amounts she believed Jin had unwarrantedly withdrawn from the business bank account to use for personal purposes, and the business income she believed Jin failed to record so she could take it as her own.

The other half relayed her perspective on the physical altercation with Jin, Ashlock and Shou. She testified it all began with Ashlock telling certain customers that their desired masseuses were not available and they could not receive services because the business was closed for the night. The masseuses, with Ji's assistance, managed to get around Jin and take the customers back into the massage rooms. Then, unexpectedly, Ashlock punched Ji with such force that he fell back against the wall behind him, and Shou scratched his face. According to Jiao, she tried to pull Shou away from her son. At the same time, she felt Jin trying to pull her away and "for defense," Jiao bit Jin. Jiao

ended up with a scratch on her face, but she did not know who inflicted it because “[t]he situation was very chaotic.”

After receiving all evidence, considering the parties’ posttrial briefing, and hearing oral closing arguments, the trial court issued a written statement of decision in which it found for the defendants of each respective case. It explained “that no party ha[d] carried its burden of proof with respect to any of the causes of action asserted” It based this conclusion primarily on (1) a finding that neither side had submitted admissible evidence concerning the business’s overall finances, including all investments, withdrawals, and handling of funds; and (2) a finding that none of the witnesses were credible concerning the physical altercation, including who was the aggressor and who acted in self-defense. The one piece of relief the court granted was a full accounting of the partnership, which both parties had requested.

Jiao and Ji timely appealed following the trial court’s entry of judgment.

DISCUSSION

Appellants challenge the sufficiency of the evidence supporting the portion of the judgment related to most of the causes of action they brought against Jin, Ashlock and Shou—battery, assault, intentional infliction of emotional distress, breach of partnership agreement and breach of fiduciary duty. They claim “[t]here is no sufficient evidence to support the judgment [which] award[ed] [them] nothing” We find otherwise.

The beginning and the end of this appeal is the standard of review. Under the substantial evidence standard of review, our review is limited to determining whether there is substantial evidence in the record, contradicted or uncontradicted, which supports the trial court’s factual determinations. (*Eriksson v. Nunnink* (2015) 233 Cal.App.4th 708, 732 (*Eriksson*)). “Substantial evidence is evidence of ponderable legal significance, reasonable in nature, credible, and of solid value. [Citation.] The substantial evidence standard of review applies to both express and implied findings of

fact made by the court in its statement of decision. [Citation.]’ [Citation.]” (*Blix Street Records, Inc. v. Cassidy* (2010) 191 Cal.App.4th 39, 47.) We view the evidence in the light most favorable to the judgment and presume in support of it the existence of every fact the trier could reasonably deduce from the evidence, resolving all conflicts in favor of the judgment. (*Jonkey v. Carignan Construction Co.* (2006) 139 Cal.App.4th 20, 24.) If the circumstances reasonably support the trier of fact’s findings, reversal of the judgment is not warranted even if another conclusion could have been reached through alternative inferences. (*Ibid.*; *Piedra v. Dugan* (2004) 123 Cal.App.4th 1483, 1489.)

A bit of a twist exists when applying this standard in a situation, like here, where the trial court judgment is the result of a party’s failure to satisfy its burden of proof on one or more issues. When ““that party appeals . . . the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.]”” (*Eriksson, supra*, 233 Cal.App.4th at p. 733.) To make that determination, we evaluate “whether the appellant’s evidence was (1) ‘uncontradicted and unimpeached’ and (2) ‘of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.’” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528; see *Eriksson, supra*, 233 Cal.App.4th at p. 733; *Dreyer’s Grand Ice Cream, Inc. v. County of Kern* (2013) 218 Cal.App.4th 828, 838; *Valero v. Board of Retirement of Tulare County Employees’ Assn.* (2012) 205 Cal.App.4th 960, 966.)

This is not a case where uncontradicted and unimpeached evidence leads to only one possible conclusion. There was conflicting evidence concerning important aspects of the physical altercation (e.g., who was the initial aggressor, who acted in self-defense) and key financial matters (e.g., initial investment amounts, reasons for certain withdrawals). Further, there were serious credibility concerns. When credibility becomes an issue, the trial court necessarily must evaluate the witness’ testimony and exercise its discretion to determine who is believable.

The trial court's responsibility to determine credibility, and our corresponding obligation to defer to that determination (*Johnson v. Pratt & Whitney Canada, Inc.* (1994) 28 Cal.App.4th 613, 622-623), exposes the fault in appellants' sole argument. They assert error by pointing to their own testimony, claiming it was substantial enough "to prove they are entitled to damages." But quantity matters not at all when the trial court finds an utter lack of credibility, as it did here.

With no credible witnesses, it was impossible for appellants to meet the burden of proof on any of their causes of action. Accordingly, the court did not err in entering judgment against them on all of their claims.

DISPOSITION

The judgment is affirmed. Respondents are entitled to their costs on appeal.

THOMPSON, J.

WE CONCUR:

MOORE, ACTING P. J.

FYBEL, J.